

Chapter 6 Solicitation & Award

Chapter 6, Section 1

About this chapter

6.1.1 Key components of this chapter

This chapter provides guidance on developing the solicitation and award methods

This chapter will provide guidance on how to successfully conduct a competitive contracting solicitation and award.

Previous chapters provided agencies with methods to assess the market, develop requirements (quality, performance, and results), analyze costs, and assess and mitigate risks. This chapter incorporates that information in a practical manner and provides agencies with guidance on:

- What to include in the solicitation document
- Communicating with bidders on how the agency will evaluate competing proposals and award the contract

6.1.2 Material covered in chapter 2

The elements of a competitive contracting solicitation, as defined in WAC 236-51-305, are listed below. **The bold items** represent what was included in Chapter 2 of this manual. The balance of the content (*italics*) will be covered in this chapter.

1. *Complete bidder instructions*
2. *Submittal requirements*
3. **Performance work statement**
4. *Cost and non-cost evaluation criteria*
5. *Name and address of the person designated to receive complaints and appeals*
6. *Agency's plan for publication and notice of award/intent to award*
7. Contract requirements, which shall include, but are not limited to:
 - a. **State standards as provided in WAC 236-51-210**
 - b. **Compliance and adherence to a quality assurance plan**
 - c. **Measurable standards for the performance of the contract**
 - d. **Methods used to measure contract performance, costs, service delivery quality, and other contract standards**
 - e. *Terms and conditions; (including distinctions between terms and conditions for an EBU versus others)*
 - f. *Provisions requiring an entity other than an employee business unit to consider employment of state employees who may be displaced by the contract*
 - g. *Cancellation provisions for improper or failed performance*
 - h. *Complaint process*
 - i. *Appeal process*

*Chapter 6, Section 2***Solicitation content**

As stated in rule (WAC 236-51-300), GA will provide state leadership in an effort to develop standard terms and conditions and bid templates to support the solicitation process for competitions under RCW 41.06.142. The purpose of this requirement was to ensure a fair and consistently applied set of rules and processes that are easily understood by all. While they are not in this version of the guidance manual, you can expect to see them in future releases.

6.2.1 Complete bidder instructions/submittal requirements

A competitive contracting solicitation should require, at a minimum, the following instructions to bidders for submitting proposals:

Instructions and submittal requirements

- Bidders will need to become familiar with applicable laws and statutes and in particular RCW 41.06.142 and WAC 236-51. The responsibility is on each bidder to understand and adhere to the requirements of the competitive contracting process.

Note: *It is recommended that agencies provide a copy or link of any referenced law or rule to each bidder.*

- Bidders are responsible for reading and understanding the business requirements outlined in the Performance Work Statement (PWS) and Quality Assurance Plan (QAP). Bidders should respond only to amendments made in writing (see WAC 236-51-310).
- **Does the solicitation require that bidders physically visit service delivery locations?** If so, bidders need to become familiar with and verify any environmental factors that may impact current or future performance to the requirements of the contract.
- **Questions, inquiries, and input into the solicitation:** Agencies will need to identify a point of contact in the solicitation. Bidders should submit all questions, inquiries, and input in writing. Agencies should be prepared to provide bidders with current service delivery cost and performance data. Materials provided to one bidder (including EBUs) will need to be shared with all bidders. Potentially displaced employees (members of an EBU) may provide input into the solicitation, as would other bidders, provided that they comply with the requirements of WAC 236-51-302.
- Amendments and changes will be issued in writing and according to WAC 236-51-310.
- Notice of the solicitation along with any related announcements and amendments will be made in accordance with WAC 236-51-320. Agencies will need to specify methods and/or systems other than those specified by GA.

- Bids will be submitted and received as required by WAC 236-51-400. Instructions for withdrawal and modification of bids (prior to opening) and correction of computational errors (after opening) may be included also.
- An EBU's bid shall include all costs related to delivering the service as required by WAC 236-51-215. Bids submitted by EBUs that do not conform to the requirements of WAC 236-51-215 may be deemed non-responsive and rejected.
- Bid information will be subject to disclosure as described in WAC 236-51-405. Included in the WAC section referenced is the process for handling proprietary information.

Award

- Agencies and bidders should refer to WAC 236-51-600 through 620 for specifics about the award process;
- If an award is made to an EBU (including those with one or more members of a bargaining unit), the resulting contract becomes the formal and binding agreement for performing services as defined in the competitive contracting solicitation.

Note: *An agency's acceptance of any bid or proposal, offered by an EBU comprised of one or more members of a bargaining unit, which conflicts with the terms of any collective bargaining agreement(s), is conditional upon resolution of such conflict with the appropriate exclusive bargaining representative(s). Resolution of such conflict shall occur as provided for in WAC 236-51-605 but before the agency issues its notice of intent to award as described in WAC 236-51-600. If resolution is not reached with the appropriate exclusive bargaining representative(s), then the agency will issue the award to the next most responsive bidder.*

- If an award is made to a private service provider (regardless whether an EBU is a bidder or not) and it results in bargaining unit employees being displaced, then agencies must:
 - Contact their liaison at the LRO prior to issuing the notice of intent to award
 - Notify displaced employees, and their exclusive bargaining representative (at the same time as unsuccessful bidders are notified) pursuant to WAC 236-51-600 of the agency's intent to award the contract to the apparent successful bidder (in this case a private service provider)
 - Respond as required by law to any requests for information or bargaining

Note: *The agency's requirement to bargain does not extend to its award decision. The requirement for the agency to bargain with the displaced employee's exclusive bargaining representative extends to only the effects of that decision. The agency's liaison at the LRO will lead the bargaining effort. The steps outlined above may also apply when a competing EBU (let's say one comprised of non-bargaining unit employees) is awarded a contract over another EBU (comprised of bargaining unit employees).*

- The notice of intent to award should include the expected award date and the name of the apparent successful bidder.

Complaints and appeal

- Complaints by bidders or potential bidders must be filed with the agency head or designee prior to the expected date of award. Details about the complaint process are contained in WAC 236-51-500 through 515.
- An appeal is filed after contract award (see WAC 236-51-700 through 745 for specifics).
- Under WAC 236-51-725, agencies shall transmit appeals within five business days to: Office of Administrative Hearings, PO Box 42488, Olympia WA 98504-2488; 360-664-8717; fax 360-664-8721.

Complaints relating to IT Technology solicitations

The following procedure is to be used in handling complaints when the competitive contracting acquisition deals with an IT services acquisition:

1. The complaint must be made to the agency, which will investigate and render a preliminary decision. The preliminary decision must be forwarded to the ISB/DIS for review.
2. The ISB/DIS will render its findings and recommended decision to the agency. The agency will adopt the findings and recommended decision rendered by the ISB/DIS as the agency's final decision.
3. This final agency decision may then be appealed after award as outlined in WAC 236-51-700 through WAC 236-51-745.

6.2.2 Evaluation of bids

RCW 41.06.142 (e) states that the agency must determine that the contract results in savings or efficiency improvements to make an award. The agency will demonstrate that it met this requirement when it completes its evaluation and issues a notice of intent to award.

The agency will need to follow the terms of the solicitation document in evaluating and scoring cost and non-cost factors. Non-cost factors are customized for each solicitation and may include, but are not limited to; a response from the bidder on meeting specified performance standards, proven track record, creating efficiency and value, or presenting a solution to a business problem. In addition, agencies should note the requirements of bid evaluators outlined in WAC 236-51-410.

At the end of this section, once again referring to the hypothetical Vehicle Maintenance example, we present two examples that illustrate how the agency may score both criteria.

Note: *Agencies should collaborate closely with their internal procurement function and/or with the contracting authority specific to the type of acquisition being planned, as established and proven evaluation methods already exist that can be tailored to fit any circumstance.*

Cost evaluation criteria

Chapter 3 provides specifics on comparing current delivery costs with cost proposals submitted by bidders. WAC 236-51-306 outlines specific requirements for agencies in evaluating costs between a private bidder and an EBU.

Non-cost evaluation criteria

Non-cost criteria will be evaluated according to the method outlined in the solicitation. An EBU’s versus a private bidder’s response to a non-cost solicitation requirement may be different. Therefore, an agency will need to consider how it configures its non-cost solicitation requirements such that it enables all bidders to be evaluated on their response. In *Figure 27* there is an example of how agencies may accomplish this.

Non-cost Solicitation requirement	Private bidder’s response	EBU’s response
Plan to deliver services consistent with the business requirements specified in the PWS	Previous performance history delivering service to other customers	Individual employee performance history of EBU members plus historical effectiveness in executing similar plans
Scalability and reliability to expand market share to include maintenance of Departments ABC & DEF Vehicles	Employee turnover, capacity, financial stability, balance sheet, and credit history	EBU plan for recruiting and retaining members, marketing plan, capital equipment utilization and/or acquisition strategy, and cost control plans

Figure 27

*Private bidder
and EBU
evaluation*

Weighing and consideration of cost versus non-cost factors

The solicitation will need to specify how cost and non-cost factors will be evaluated and weighted. How at the agency determines the criteria will depend on the nature of the requirements and the business problem presented in the PWS and QAP. Figures 28 and 29 illustrate a cost/non-cost bid evaluation method.

Canceling a solicitation

WAC 236-51-615 outlines when an agency may cancel a solicitation or reject all bids after the bids are opened, but before bid award if:

1. Cost savings or efficiency improvements will not be achieved as a result of an award
2. The solicitation did not contain all of the information and factors necessary to determine if cost savings or efficiency improvements will be achieved as a result of an award
3. No responsive bids were received from a responsible bidder (see glossary for a definition or responsive and responsible)
4. The solicitation and award process was not fair, equitable, or objective
5. Changes in market conditions have occurred that significantly impact the original intent to competitively contract the service

Figure 28 *Cost & Non-cost Evaluation Criteria: Private bidder*

Figure 29 *Cost and Non-cost Evaluation Criteria: EBU*

click on figures above to download Excel template.

6.2.3 Standard terms and conditions

A required element of every competitive contracting solicitation

Terms and conditions are an important requirement of any solicitation. The state's procurement authorities provide standardized terms and conditions for use in the acquisition of goods and services which should be used when contracting with private service providers (see list below). These standard terms and conditions have been reviewed and, where required, modified to handle the specific requirements of a competitive contracting solicitation. An EBU, on the other hand, is comprised of state employees and is an entity within its own agency therefore; the terms and conditions for an EBU's agreement will be very different from those of a private service provider. GA, in conjunction with OFM, Office of the Attorney General, DOP, and DIS has developed a separate set of terms and conditions that apply to an EBU.

1. ISB Model Contracts for Personal and Purchased Services at:
<http://dis.wa.gov/portfolio/modelcontracts.htm>
2. Office of State Procurement; Competitive Procurement Standards, Professional Service Standards: <http://www.ga.wa.gov/PCA/Bids/T3SSTAND.DOC>
3. Office of State Procurement; Competitive Procurement Standards, Standard Terms and Conditions: <http://www.ga.wa.gov/PCA/Bids/STTERMS.DOC>
4. OFM; Guide to Personal Services Contracting, Appendix E - Sample Personal Services Contract: <http://www.ofm.wa.gov/contracts/psc/Append%20E.doc>
5. OFM; Guide to Client Services Contracting, Appendix D - Model Client Service Contract: <http://www.ofm.wa.gov/contracts/csg/appendixD.doc>

Changes to standard terms and conditions

It is not uncommon for a bidder to recommend changes to the standard terms and conditions. These changes can have significant implications later on and should not be dismissed as a trivial detail. For example, one standard term addresses the independent status of the private service provider. This term is in place to protect the state from costly claims by contractors or their employees of the right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW. Terms and conditions are established at the state level to address these and other contracting risks. Latitude to negotiate or deviate from these standards will require appropriate review by the agency's management (see chapter 4 - Risk Assessment), legal team, and/or the Office of the Attorney General.

6.2.4 Terms and conditions required in a competitive contracting solicitation

Hiring of state employees who may be displaced by the contract

RCW 41.06.142 (1) (c) requires that a contract with an entity other than an EBU include a provision requiring the entity to consider employment of state employees who may be displaced by the contract. Regardless of the terms and conditions the agency decides to use, this term must be included.

Note: *The law did not intend for agencies to compel private bidders to hire potentially displaced employees nor indicate the manner in which it should consider them.*

Contract cancellation (termination) provisions

All of the state's terms and conditions contain cancellation (termination) provisions in one form or another. As this provision is required by RCW 41.06.142 (1) (d), it must be included. Cancellation of a contract should be the result of failure by a service provider to meet standards of

contract performance, costs, service delivery quality, and other contract standards as identified in the contract and solicitation.

Performance Work Statement (PWS) versus Statement of Work (SOW)

A central piece of performance based contracting is the concept of contracting for results versus simply specifying the tasks to be performed under the contract. For competitive contracting, RCW 41.06.142 (1) (a) requires that the invitation for bid or request for proposal contains measurable standards for the performance of the contract. This requirement under the law is addressed in WAC 236-51-305 (3) which requires that the competitive contracting solicitation contain a performance work statement.

As defined in WAC 236-51-010 (20) a “**performance work statement**” means a statement of the technical, functional and performance characteristics or requirements of the work to be performed. The statement identifies essential functions to be performed, determines performance factors, including the location of the work, the units of work, the quantity of work units, and the quality and timeliness of the work units.

A “**statement of work**” is simply a narrative description of products or services to be provided under the contract.

Conformance to a Quality Assurance Plan (QAP)

In conjunction with a PWS the agency’s solicitation must contain the requirement that service providers conform to a QAP. WAC 236-51-010 (22) defines a “**quality assurance plan**” as a plan by which an agency will monitor a contract awardee’s performance to ensure that the standards of the performance work statement are met within the costs, quality of service, delivery, and other standards of the contract.